IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6959 of 2007
Date of decision 1. 10 .2007

M/s Varun Steels . .. petitioner

Versus

M/s Canara Bank and another .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.A.K.Kalsy, Advocate for the petitioner.

None for the respondents.

M.M.Kumar, J.

This writ petition filed under Article 226 of the Constitution prays for quashing notice dated 20.10.2006 (Annexure P.3) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') issued by the respondent bank for recovery of sum of Rs.12,13,251.58.

Brief facts of the case are that the petitioner was sanctioned a Open Cash Credit Limit (OCC) of Rs. 10,00,000/- on 10.5.1999 for a period of one year by hypothecating the stock, book debts and collateral security of landed property. The limit was extended upto 9.8.2000 and afterwards on 13.7.2000 it was again renewed for a further period of one year till 12.7.2001. The amount was overdrawn exceeding the limit since 28.8.2000. After 29.8.2000 there was absolutely no transaction in the

account which became irregular for which respondent no.2 issued notice dated 6.3.2001 (Annexure P.1) calling upon the petitioner to remit the entire liability with interest on or before 25.3.2001. The petitioner failed to reply to the notice. Then a legal notice was issued by the respondents on 5.3.2002 (Annexure P.2) asking the petitioner to pay the amount of Rs. 12,13,251.58P. with interest calculated upto 31.12.2000. The petitioner was apprised by the respondent that if it failed to pay the aforesaid amount then the respondents were to file a suit against it. Accordingly, the respondent bank filed a suit/application bearing No. OA 467 of 2002 for recovery of the amount due before the Debt Recovery Tribunal (for brevity 'the DRT') which is still pending. Thereafter a notice dated 20.10.2006 under Section 13(2) of the Act was issued by respondent no.2 asking the petitioner to discharge the liability as claimed through notice dated 5.3.2002 within sixty days otherwise the respondent bank was entitled to exercise all or any of the rights under Section 13(4) of the Act. The petitioner replied to the above notice by stating that no action under Section 13 of the Act could be taken as already the respondents have availed the remedy of filing the suit for recovery of the due amount before the Debt Recovery Tribunal. The respondents vide letter dated 23.12.2006 replied to the petitioner that they can take action under the Act. The same was again replied by the petitioner pointing out that there is a bar of limitation under Section 36 of the Act.

Mr.A.K.Kalsy, learned counsel for the petitioner, has argued that the provisions of Section 36 of the Act provide for a complete bar on the secured creditor to make a claim of time barred debt. According to the learned counsel the provision of Limitation Act, 1963 would apply to find out as to whether the debt is time barred. In that regard learned counsel has

placed reliance on Article 62 of the Limitation Act, 1963 which provides for a period of 12 years to enforce payment of money secured by mortgage. According to the learned counsel the time runs from the date when the money becomes due and in the present case it would be 15.4.1990. He has pointed out that commencement of proceedings before the Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institution Act, 1993 cannot be considered assertion of claim for considering the period of limitation provided by Section 36 of the Act for initiation of action under Section 13(4) of the Act. Learned counsel has placed reliance on a Division Bench judgement of Orissa High Court in the case of Indumati Pattanaik v. Chief Manager and Authorised Officer Bank of India IV(2005) BC357 (DB)(Orissa) . He has also submitted that the petitioner is without any remedy and after issuance of notice under Section 13(4) of the Securitization Act the possession of his property would be taken over.

No one has put in appearance on behalf of the respondents despite service.

We have thoughtfully considered the submissions made by the learned counsel for the petitioner and express our inability to accept the same. Firstly the main appeal of the petitioner is pending consideration of the DRT wherein merits of the controversy are likely to be considered. We are further of the view that once the dispute has been raised before the Debt Recovery Tribunal then the period of limitation has to be examined with reference to the date of availing that remedy and that a fresh period of limitation would not become available under Section 36 of the Act. Moreover, the provisions of Section 13(4) provides for an additional remedy as has been held by Hon'ble the Supreme Court in the case of M/s

Transcore v. Union of India AIR 2006 SC 712. The observations of their Lordships reads as under:

> "These are some of the factors which the Authorised Officer of the bank/FI has to keep in mind when he gives notice under Section 13(2) of the NPA Act. Hence, equity, exists in the bank/FI and not in the borrower. Therefore, apart from obligation to repay, the borrower undertakes to keep the margin and the value of the securities hypothecated so that there is no mis-match between the asset-liability in the books of the bank/FI. This obligation is different and distinct from the obligation to repay. It is the former obligation of the borrower which attracts the provisions of NPA Act which seeks to enforce it by measures mentioned in Section 13(4) of NPA Act, which measures are not contemplated by DRT Act and, therefore, it is wrong to say that the two Acts provide parallel remedies as held by the judgement of the High Court in M/s. Kalyani Sales Co. As stated, the remedy under DRT Act falls short as compared to NPA Act which refers to acquisition and assignment of the receivables to the asset reconstruction company and which authorizes banks/FIs to take possession or to take over management which is not there in the DRT Act. It is for this reason that NPA Act is treated as an additional remedy (Section 37), which is not inconsistent with the DRT Act."

Moreover, the question regarding limitation cannot be gone into in proceedings under Article 226 of the Constitution. It is well settled that the question of limitation is a mixed question of fact and law. It is not possible for us to give a positive conclusion that the debt is barred by time because there may be acknowledgment on the part of the petitioner or it may be a running account which may sound into different results. The DRT is certainly better equipped to decide these questions. We further find that there is no equity in favour of the petitioner. Its account became irregular on 29.8.2000. It is well settled that whosoever comes to equity is expected to do equity himself. Therefore, the equitable jurisdiction of this Court under Article 226 of the Constitution would not be available.

The judgement of the Division Bench in the case of Indumati Pattanaik (supra) on which reliance has been placed by the petitioner would not be applicable to the facts of the present case because a perusal of the judgement shows that the secured creditors did not approach the DRT whereas in the present case the remedy provided by the DRT has been availed by the secured creditors by filing OA No.467 of 2002. We are further of the view that the period of limitation for recovery of debt has to be reckoned from the date the account has become Non Performing Assets (NPA) and not from the initially date of collateral security of landed property or equitable mortgage. It is for this reason that the question of limitation has to be considered necessarily as the question of fact or at best the mixed question of fact and law.

For the reasons aforementioned, this petition fails and the same is dismissed. However, it is made clear that any observation made in this order shall not be construed as an expression of opinion on merits of the

controversy by the Debt Recovery Tribunal where original application filed by the respondent is pending.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

1.10 .2007
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